



MODRALL SPERLING

L A W Y E R S

March 21, 2019

Honorable Michael J. Melloy, Special Master  
United States Court of Appeals for the Eighth Circuit  
111 Seventh Ave. SE, Box 22  
Cedar Rapids, Iowa 52401  
Judge\_Michael\_Melloy@ca8.uscourts.gov  
TXvNM141@ca8.uscourts.gov  
*via electronic mail*

Maria O'Brien  
Tel: 505.848.1803  
Fax: 505.848.9710  
mobrien@modrall.com

Re: State of Texas & United States of America v. State of New Mexico and State of Colorado, Original No. 141: March 19, 2019 Order setting agenda for April 2, 2019 hearing

Dear Special Master Melloy,

On behalf of El Paso Water Improvement District No. 1 (“EPCWID”) I am in receipt of your March 19, 2019 Order setting the tentative agenda for the hearing on April 2, 2019. EPCWID respectfully requests it be allowed time to present argument, and that it be allowed at least the 5 minutes the agenda suggests should potentially be allocated to each amici. We request EPCWID be allocated at least 5 minutes, and request we be afforded up to 10 minutes if the schedule allows and circumstances warrant the additional time.

As you recognized earlier in these proceedings, EPCWID, along with Elephant Butte Irrigation District (“EBID”) have a unique status in this case and are not similarly situated to other amici. Specifically, the two Districts are the sole beneficiaries of water from the Rio Grande Project which the Districts operate in coordination with the United States Bureau of Reclamation and from which the Districts receive and distribute water supply to their respective constituents. As the Supreme Court acknowledged, the Rio Grande Project is inextricably intertwined with the Rio Grande Compact and the water supply in and from the Project is directly at issue in this case – the very water supply which is the basis for the existence of the two Districts. It is not only the status of the two Districts as the beneficiaries of the Rio Grande Project that sets them apart from the other amici in this case. New Mexico’s Counterclaims have now put at issue contracts to which EPCWID and EBID are parties. Specifically, New Mexico seeks to void the 2008 Operating Agreement and various Miscellaneous Purposes Act contracts. Only the United States, EPCWID and EBID are parties to the Operating Agreement; only the United States, EPCWID and the City of El Paso are party to the challenged Miscellaneous Purposes Act contracts.

EPCWID has filed response briefs to all pending motions set for hearing on April 2, 2019. In those briefs, EPCWID supports the positions advanced by the United States

Modrall Sperling  
Roehl Harris & Sisk P.A.

500 Fourth Street NW  
Suite 1000  
Albuquerque,  
New Mexico 87102

PO Box 2168  
Albuquerque,  
New Mexico 87103-2168

Tel: 505.848.1800  
www.modrall.com

and the State of Texas. However, in its responses EPCWID also presents, as only it can, its unique interests which are not completely symmetrical with the United States and the State of Texas, particularly with respect to the 2008 Operating Agreement to which the State of Texas is not a party; and which was the result of the settlement of litigation with the United States. As set forth fully in EPCWID's response brief in support of the United States' Motion for Judgment on the Pleadings Against New Mexico's Counterclaims 2, 3, 5, 6, 7, 8 and 9, the 2008 Operating Agreement is the foundation for Rio Grande Project operations and serves as the mechanism to allocate Project water as between EPCWID and EBID to accommodate depletions of Project water in New Mexico and ensure EPCWID receives its rightful allocation of Project surface water in Texas.

Based on the foregoing, EPCWID respectfully requests it be afforded at least 5 minutes to present argument at the April 2, 2019 hearing and requests it be allowed up to 10 minutes if circumstances warrant additional time. In making this request EPCWID is mindful of and does not intend to repeat arguments presented by the United States or Texas. Rather, EPCWID's intent is to assist the Special Master in understanding the full scope of the issues by presenting argument specific to the District's unique position as a beneficiary of the Rio Grande Project water supply and as a party to the 2008 Operating Agreement.

We greatly appreciate your Honor's consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria", with a long, sweeping horizontal line extending to the right.

Maria O'Brien

cc: Attached Service List  
(electronically)

**SERVICE LIST**

**UNITED STATES**

**JAMES J. DUBOIS\***

[james.dubois@usdoj.gov](mailto:james.dubois@usdoj.gov)

**R. LEE LEININGER**

(303) 844-1375

**THOMAS K. SNODGRASS**

[lee.leininger@usdoj.gov](mailto:lee.leininger@usdoj.gov)

U.S. DEPARTMENT OF JUSTICE

(303)844-1364

Environment & Natural Resources Division

[thomas.snodgrass@usdoj.gov](mailto:thomas.snodgrass@usdoj.gov)

999 18th Street

(303)844-7233

South Terrace – Suite 370

Denver, Colorado 80202

**Seth Allison, Paralegal**

[seth.allison@usdoj.gov](mailto:seth.allison@usdoj.gov)

(303)844-7917

**NOEL J. FRANCISCO\***

[supremectbriefs@usdoj.gov](mailto:supremectbriefs@usdoj.gov)

*Solicitor General*

(202)514-2217

**JEFFREY H. WOOD**

*Acting Assistant Attorney General*

**ANN O'CONNELL**

*Assistant to the Solicitor General*

U.S. DEPARTMENT OF JUSTICE

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

**STEPHEN M. MACFARLANE**

[stephen.macfarlane@usdoj.gov](mailto:stephen.macfarlane@usdoj.gov)

U.S. DEPARTMENT OF JUSTICE

(916) 930-2204

Environment & Natural Resources Division

501 I Street, Suite 9-700

Sacramento, CA 95814

**JUDITH E. COLEMAN**

[judith.coleman@usdoj.gov](mailto:judith.coleman@usdoj.gov)

U.S. DEPARTMENT OF JUSTICE

(202) 514-3553

Environment & Natural Resources Division

P.O. Box 7611

Washington, D.C. 20044-7611

**STATE OF NEW MEXICO**

**HECTOR H. BALDERAS**  
*New Mexico Attorney General*  
**TANIA MAESTAS**  
*Deputy Attorney General*  
STATE OF NEW MEXICO  
P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
505-239-4672  
[hbalderas@nmag.gov](mailto:hbalderas@nmag.gov)  
[tmnaestas@nmag.gov](mailto:tmnaestas@nmag.gov)

**MARCUS J. RAEL, JR.\***  
**DAVID A. ROMAN**  
*Special Assistant Attorneys General*  
ROBLES, RAEL & ANAYA, P.C.  
500 Marquette Avenue NW,  
Suite 700  
Albuquerque, New Mexico 87102  
505-242-2228  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)

*\*Counsel of Record*  
**BENNET W. RALEY**  
**LISA M. THOMPSON**  
**MICHAEL A. KOPP**  
*Special Assistant Attorneys General*  
TROUT RALEY  
1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203 303-  
861-1963  
[braley@troutlaw.com](mailto:braley@troutlaw.com)  
[lthompson@troutlaw.com](mailto:lthompson@troutlaw.com)  
[mkopp@troutlaw.com](mailto:mkopp@troutlaw.com)

**STATE OF COLORADO**

**CHAD M. WALLACE\***  
*Senior Assistant Attorney General*  
COLORADO DEPARTMENT OF LAW  
1300 Broadway  
Denver, CO 80203  
Tel. 720-508-6281  
[chad.wallace@coag.gov](mailto:chad.wallace@coag.gov)  
Paralegal: Nan B. Edwards  
[nan.edwards@coag.gov](mailto:nan.edwards@coag.gov)

**PHILIP J. WEISER**  
*Attorney General of Colorado*  
**KAREN M. KWON**  
*First Assistant Attorney General*  
Colorado Department of Law  
1300 Broadway  
Denver, CO 80203  
Tel. 720-508-6281  
[eric.olson@coag.gov](mailto:eric.olson@coag.gov)  
[karen.kwon@coag.gov](mailto:karen.kwon@coag.gov)

**STATE OF TEXAS**

**STUART L. SOMACH\***  
**ANDREW M. HITCHINGS**  
**ROBERT B. HOFFMAN**  
**FRANCIS M. "MAC"**  
**GOLDSBERRY II**

(916) 446-7979  
(916) 803- 4561 (cell)  
[ssomach@somachlaw.com](mailto:ssomach@somachlaw.com) [ahitchings@somachlaw.com](mailto:ahitchings@somachlaw.com)  
[rhoffman@somachlaw.com](mailto:rhoffman@somachlaw.com) [mgoldsberry@somachlaw.com](mailto:mgoldsberry@somachlaw.com)  
[tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com) [bjohnson@somachlaw.com](mailto:bjohnson@somachlaw.com)

**THERESA C. BARFIELD**  
**BRITTANY K. JOHNSON**  
SOMACH SIMMONS & DUNN, PC  
500 Capital Mall, Suite 1000  
Sacramento, CA 95814  
Tel. 916-446-7979  
Cell 916-803-4561

**Rhonda Stephenson – Secretary**  
**Christina Garro – Paralegal**  
**Yolanda De La Cruz – Secretary**

[rstephenson@somachlaw.com](mailto:rstephenson@somachlaw.com)  
[cgarro@somachlaw.com](mailto:cgarro@somachlaw.com)  
[ydelacruz@somachlaw.com](mailto:ydelacruz@somachlaw.com)

**KEN PAXTON**, Attorney General  
**JEFFREY C. MATEER**  
*First Assistant Attorney General*  
**BRANTLEY STARR**  
*Deputy First Assistant Attorney General*  
**JAMES E. DAVIS**, Deputy  
*Attorney General*  
**PRICILLA M. HUBENAK**  
*Chief, Environmental Protection Division*  
P.O. Box 12548  
Austin, TX 78711-2548

[Priscilla.Hubenak@oag.texas.gov](mailto:Priscilla.Hubenak@oag.texas.gov)

**AMICI / FOR INFORMATIONAL PURPOSES ONLY**

**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY**

**JAMES C. BROCKMANN\***  
**JAY F. STEIN**  
STEIN & BROCKMANN, P.A.  
P.O. Box 2067  
Santé Fe, New Mexico 87504

(505) 983-3880  
[jcbrockmann@newmexicowaterlaw.com](mailto:jcbrockmann@newmexicowaterlaw.com)  
[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)  
[administrator@newmexicowaterlaw.com](mailto:administrator@newmexicowaterlaw.com)

**PETER AUH**  
ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY  
P.O. Box 568  
Albuquerque, NM 87103-0568

(505) 289-3092  
[pauh@abcwua.org](mailto:pauh@abcwua.org)

**CITY OF EL PASO**

**DOUGLAS G. CAROOM\***  
**SUSAN M. MAXWELL**  
BICKERSTAFF HEATH DELGADO  
ACOSTA, LLP  
2711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746

(512) 472-8021  
[dcaroom@bickerstaff.com](mailto:dcaroom@bickerstaff.com)  
[smaxwell@bickerstaff.com](mailto:smaxwell@bickerstaff.com)

**CITY OF LAS CRUCES**

**JAY F. STEIN \***  
**JAMES C. BROCKMANN**  
STEIN & BROCKMANN, P.A.  
P.O. Box 2067  
Santé Fe, New Mexico 87504

(505) 983-3880  
[jcbrockmann@newmexicowaterlaw.com](mailto:jcbrockmann@newmexicowaterlaw.com)  
[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)  
[administrator@newmexicowaterlaw.com](mailto:administrator@newmexicowaterlaw.com)

**JENNIFER VEGA-BROWN**  
**MARCIA B. DRIGGERS**  
LAW CRUCES CITY ATTORNEY'S OFFICE  
P.O. Box 20000  
Las Cruces, New Mexico 88004

(575) 541-2128  
[jvega-brown@las-cruces.org](mailto:jvega-brown@las-cruces.org)  
[marcyd@las-cruces.org](mailto:marcyd@las-cruces.org)

**ELEPHANT BUTTE IRRIGATION DISTRICT**

**SAMANTHA R. BARNCastle\***  
BARNCastle LAW FIRM, LLC  
1100 South Main, Ste. 20  
P.O. Box 1556  
Las Cruces, NM 88004  
**Janet Correll – Paralegal**

(575) 636-2377  
(575) 636-2688 (fax)  
[samantha@h2o-legal.com](mailto:samantha@h2o-legal.com)  
[janet@h2o-legal.com](mailto:janet@h2o-legal.com)

**HUDSPETH COUNTY CONSERVATION AND RECLAMATION DISTRICT**

**ANDREW S. "DREW" MILLER\***  
KEMP SMITH LLP  
816 Congress Avenue, Suite 1305  
Austin, TX 78701

(512) 320-5466  
[dmiller@kempsmith.com](mailto:dmiller@kempsmith.com)

**STATE OF KANSAS**

**TOBY CROUSE\***

*Solicitor General, State of Kansas*

**DEREK SCHMIDT**

*Attorney General, State of Kansas*

**JEFFREY A. CHANAY**

*Chief Deputy Attorney General*

**BRYAN C. CLARK**

*Assistant Solicitor General*

**DWIGHT R. CARSWELL**

*Assistant Attorney General*

120 S. W. 10th Ave., 2nd Floor

Topeka, KS 66612

(785) 296-2215

[toby.crouse@ag.ks.gov](mailto:toby.crouse@ag.ks.gov)

**NEW MEXICO PECAN GROWERS**

**TESSA T. DAVIDSON\***

DAVIDSON LAW FIRM, LLC

4206 Corrales Road

P.O. Box 2240

Corrales, NM 87048

(505) 792-3636

[ttd@tessadavidson.com](mailto:ttd@tessadavidson.com)

**Patricia McCan – Paralegal**

[patricia@tessadavidson.com](mailto:patricia@tessadavidson.com)

**NEW MEXICO STATE UNIVERSITY**

**JOHN W. UTTON\***

UTTUN & KERY, P.A

P.O. Box 2386

Santa Fe, New Mexico 87504

(505) 699-1445

[john@uttonkery.com](mailto:john@uttonkery.com)

**LIZBETH ELLIS**

*General Counsel*

**CLAYTON BRADLEY**

*Counsel*

New Mexico State University

Hadley Hall Room 132

2850 Weddell Road

Las Cruces, NM 88003

(575) 646-2446

[lellis@ad.nmsu.edu](mailto:lellis@ad.nmsu.edu)

[bradleyc@ad.nmsu.edu](mailto:bradleyc@ad.nmsu.edu)